

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TELLY HARRIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 1:22-cv-266-SPB-RAL
	)	
WARDEN SUTTER, <i>et al.</i> ,	)	
	)	
Respondents.	)	

## MEMORANDUM ORDER

Petitioner Telly Harris, an inmate at the Erie County Jail, filed this civil action seeking a writ of habeas corpus pursuant to 28 U.S.C. §2241. The petition was initially lodged by the Clerk of Court and was filed of record on October 3, 2022. ECF Nos. 1, 4. Currently pending before the Court are a motion by Respondents to dismiss the petition, and a motion by Harris to amend his petition. ECF Nos. 7, 19. These motions have been referred to United States Magistrate Judge Richard A. Lanzillo for a report and recommendation (“R&R”) in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), Federal Rule of Civil Procedure 72(b), and the Local Rules for Magistrate Judges.

On May 16, 2023, Magistrate Judge Lanzillo issued an R&R in which he recommended that the Respondents' motion to dismiss be granted and that both the Petitioner's §2241 petition and motion to amend be denied without issuance of a certificate of appealability. ECF No. 21. In essence, Judge Lanzillo determined that the instant petition was premature, as Petitioner has not fully exhausted his state court remedies. For the same reason, Judge Lanzillo also determined that this Court should abstain from exercising subject matter jurisdiction over the instant petition pursuant to the principles articulated in *Younger v. Harris*, 401 U.S. 37 (1971).

Petitioner filed objections to the R&R and supporting exhibits on June 5, 2023. ECF Nos. 22, 23. These filings fail to establish any present entitlement to relief under 28 U.S.C. §2241. Based upon this Court's review of the case and the public docket sheets relating to Petitioner's underlying criminal cases, it appears that he is currently serving a sentence of 8 to 23 months' incarceration for assault charges that were filed in the Erie County Court of Common Pleas at Case No. 1874 of 2021. That case is currently on direct appeal. In a previously filed criminal case, No. 2317 of 2020, Petitioner was charged with numerous sexual offenses related to an alleged rape. After Petitioner was convicted on the assault charges in the 2021 case (for which he is now imprisoned), the Commonwealth requested that his bond in Case No. 2317 of 2020 be revoked. Eventually, the charges at Case No. 2317 of 2020 were *nolle prossed*. The Magistrate Judge interpreted instant habeas petition as asserting Petitioner's actual innocence in the 2020 criminal case. The Magistrate Judge's recommendation for dismissal is predicated on the fact that Petitioner has not exhausted his state court remedies relative to any constitutional claims that he may have relative to the 2020 case.

Petitioner's objections are largely incoherent, but they do make note of the recent *nolle prosequi* in the 2020 case, and they loosely reference various constitutional principles that Petitioner apparently believes have been violated. Nevertheless, to the extent Petitioner has suffered any type of constitutional tort in connection with his current incarceration, neither his objections nor his motion to amend suggest that he has completed the necessary exhaustion of his state court remedies.

Accordingly, after *de novo* review of the petition and documents in the case, including the parties' pending motions, the Report and Recommendation, and Petitioner's objections and exhibits thereto, the following order is entered:

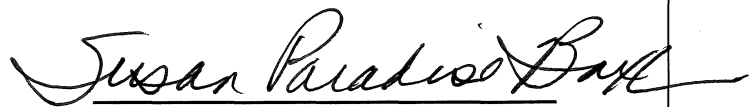
AND NOW, this 30th day of June, 2023,

IT IS ORDERED that the Respondents' motion to dismiss the instant petition for writ of habeas corpus, ECF No. [7], is GRANTED, and the Petitioner's motions to amend, filed at ECF Nos. [19] and [24], are DENIED. Because Petitioner has not exhausted the state court remedies that are available to him, IT IS FURTHER ORDERED that the instant petition for a writ of habeas corpus shall be, and hereby is, DISMISSED without prejudice.

IT IS FURTHER ORDERED that the Report and Recommendation of Magistrate Judge Lanzillo, issued on February 16, 2023, ECF No. [21], is hereby adopted as the opinion of this Court. Petitioner's objections to the Report and Recommendation, ECF No. [23], are hereby OVERRULED.

Finally, because jurists of reason would not find it debatable whether Petitioner has failed to exhaust his federal constitutional claims in state court, IT IS FURTHER ORDERED that no certificate of appealability shall issue in this case.

As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."

A handwritten signature in black ink, reading "Susan Paradise Baxter". The signature is fluid and cursive, with a horizontal line drawn underneath the name.

SUSAN PARADISE BAXTER  
United States District Judge